

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD GIBBS, JR.,	§	
	§	No. 280, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. D No. 0305016899
Appellee.	§	

Submitted: July 21, 2009
Decided: October 12, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGLEY**, Justices.

ORDER

This 12th day of October 2009, upon consideration of the appellant’s opening brief, the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), and the Superior Court record, it appears to the Court that:

(1) The appellant, Edward Gibbs, Jr., filed an appeal from the Superior Court’s May 4, 2009 denial of his “motion to correct sentence” under Superior Court Criminal Rule 35(a). The appellee, State of Delaware, has moved to affirm the Superior Court’s judgment on the basis that it is

manifest on the face of Gibbs' opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In October 2003, Gibbs was found guilty by a Superior Court jury of Escape after Conviction. In December 2003, Gibbs was sentenced as a habitual offender to twenty years at Level V imprisonment.² On direct appeal, this Court affirmed Gibb's conviction and sentence.³ Thereafter, this Court affirmed the Superior Court's denial of postconviction relief.⁴

(3) On April 29, 2009, Gibbs filed a motion for correction of sentence under Rule 35(a). Gibbs sought relief on the basis that the State's habitual offender motion was defective. According to Gibbs, the documentary evidence attached to the motion did not prove beyond a reasonable doubt that he was the same "Edward Gibbs" who was convicted of the predicate felonies listed in the motion. By order dated May 4, 2009, the Superior Court denied Gibbs' sentence correction motion as without merit. This appeal followed.

(4) After careful consideration of the parties' positions on appeal and the Superior Court record, we have concluded that the denial of Gibbs' sentence correction motion should be affirmed. Absent extraordinary

¹ Del. Supr.Ct. R. 25(a).

² Del. Code Ann. tit. 11, § 4214(a) (2007).

³ *Gibbs v. State*, 2005 WL 535011 (Del. Supr.).

⁴ *Gibbs v. State*, 2006 WL 3455097 (Del. Supr.).

circumstances, a motion to correct a sentence imposed in an illegal manner must be filed within ninety days of sentencing.⁵ In this case, the sentence correction motion was filed more than five years after sentencing and thus was untimely. Gibbs has not demonstrated, nor does the record reflect, that extraordinary circumstances warrant review of the motion at this late date.⁶

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁵ Del. Super. Ct. Crim. R. 35(a), (b).

⁶ The record reflects that Gibbs had notice of the State's motion to declare him a habitual offender and was fully apprised of the factual basis for the motion as well as the documentary evidence the State intended to rely on in support of the motion. Thereafter, Gibbs appeared before the Superior Court for sentencing and was provided an opportunity to be heard and to confront the evidence against him. Gibbs did not raise his claim of mistaken identity at sentencing, on direct appeal, in his motion for postconviction relief, or in a prior motion for reduction of sentence.